

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re: TESTOSTERONE
REPLACEMENT THERAPY
PRODUCTS LIABILITY LITIGATION

MDL No. 2545

Master Docket Case No. 1:14-cv-01748

Honorable Matthew F. Kennelly

THIS DOCUMENT RELATES TO:

Richard Kearney v. Endo Pharmaceuticals Inc. et al.,
Case No. 1:16-cv-03209

Jacques Edwards v. Endo Pharmaceuticals Inc. et al.,
Case No. 1:18-cv-07614

**ENDO DEFENDANTS' MOTION FOR AN ORDER TO SHOW CAUSE WHY THE
CASE SHOULD NOT BE DISMISSED WITH PREJUDICE FOR FAILURE
TO COMPLY WITH CASE MANAGEMENT ORDER NO. 126**

Defendants Auxilium Pharmaceuticals, LLC (f/k/a Auxilium Pharmaceuticals, Inc.), Endo Pharmaceuticals Inc., and GlaxoSmithKline LLC (collectively, the “Endo Defendants”) by and through undersigned counsel, hereby move the Court pursuant to Case Management Order No. 126 (“CMO 126”), ¶ B.11., for an Order To Show Cause Why The Case Should Not Be Dismissed With Prejudice directed to the following two Plaintiffs with a TRT case pending in MDL No. 2545 against an Endo Defendant who have not submitted a settlement claim to Special Master Randi Ellis and who have failed to produce the items required by CMO 126 ¶¶ B.9. and B.10:

1. *Richard Kearney v. Endo Pharmaceuticals Inc. et al.*, Case No. 1:16-cv-03209;
and
2. *Jacques Edwards v. Endo Pharmaceuticals Inc. et al.*, Case No. 1:18-cv-07614.

Pursuant to CMO 126, ¶ B.11., counsel for these two Plaintiffs shall have 21 days to respond to said Order to Show Cause by either: (a) curing Plaintiff’s failure to comply with the CMO 126 obligations of paragraphs B.9. and B.10.; or (b) filing a stipulation dismissing the

Endo Defendants with prejudice. Pursuant to CMO 126, ¶ B.11, “[i]f [a] Litigating Plaintiff fails to show cause within 21 days of entry of the Court’s Order to Show Cause, the Court shall dismiss the Litigating Plaintiff’s case with prejudice....”

FACTUAL AND PROCEDURAL BACKGROUND

On June 11, 2018, the Endo Defendants and Plaintiffs’ Lead Counsel executed a confidential master settlement agreement (the “Agreement”) that allowed for the resolution of the known testosterone replacement therapy product liability claims against the Endo Defendants. The Agreement does not involve any admission of wrongdoing or liability by any of the Endo Defendants.

On June 11, 2018, the Court entered CMO 126, Docket Control Order for Future Cases Against Eli Lilly, Endo, Auxilium, & GSK. (ECF No. 2716.) Pursuant to paragraph B.10.a. of CMO 126, each Litigating Plaintiff (as defined in CMO 126) with personal injury (and related) claims against one or more of the Endo Defendants who does not participate in the voluntary settlement program must produce the items required by paragraph B.9. no later than 90 days after the date such Litigating Plaintiff elects not to settle his/her claims, and pursuant to paragraph B.10.b. of CMO 126, each Litigating Plaintiff with personal injury (and related) claims newly filed in, removed to, or transferred to this MDL against one or more of the Endo Defendants after the entry of CMO 126 must produce the items required by paragraph B.9. no later than 90 days after the case is filed in, removed to, or transferred to this MDL. Plaintiff Richard Kearney filed his lawsuit against the Endo Defendants prior to the entry of CMO 126 on June 11, 2018. Plaintiff Jacques Edwards filed his lawsuit against the Endo Defendants on November 16, 2018. Both Plaintiff Richard Kearney and Plaintiff Jacques Edwards are represented by Baird A Brown Law Offices.

Pursuant to Special Master Ellis's Endo and Auxilium TRT Products Settlement Claims Process Timeline, each Plaintiff had until August 27, 2018, to submit his claim submission form to Special Master Ellis and each Plaintiff was further provided a fifteen day extension—until September 11, 2018—to submit his claim submission form to Special Master Ellis. (*See Ex. A.*) Despite Plaintiffs and Plaintiffs' counsel being made aware of the September 11, 2018, claim form submission deadline on at least three separate occasions (*See Exs. B-D*), and also being informed on October 25, 2018, that the submitted claims for the Endo Defendants were in eligibility review (*See Ex. E*), to date neither Plaintiff Richard Kearney nor Plaintiff Jacques Edwards has submitted a claim submission form to Special Master Ellis. (*See Ex. F*, Declaration of Daniel Meyers, ¶ 2.)

ARGUMENT

Plaintiff Richard Kearney elected not to settle his claims against the Endo Defendants under the voluntary settlement program by not submitting his claim submission form to Special Master Ellis on or before September 11, 2018 and Plaintiff Jacques Edwards elected not to settle his claims against the Endo Defendants under the voluntary settlement program by not submitting his claim submission form to Special Master Ellis on or before February 14, 2019 (90 days after filing his complaint in this MDL). Pursuant to CMO 126, each of these Litigating Plaintiffs had ample due process notice about the requirements necessary to proceed if he elected not to settle under the voluntary settlement program. Moreover, over **343 days** have elapsed since Plaintiff Richard Kearney elected not to settle under the voluntary settlement program and over **187 days** have elapsed since Plaintiff Jacques Edwards elected not to settle under the voluntary settlement program—substantially more time than the 90 days that CMO 126 paragraphs B.10.a. and B.10.b. affords each Plaintiff to provide the items required by paragraph

B.9. To date, neither Plaintiff Richard Kearney nor Plaintiff Jacques Edwards have produced the items required by CMO 126 paragraphs B.9. and B.10. (*See Ex. F*, Declaration of Daniel Meyers, ¶ 3.)

Pursuant to CMO 126, Defendants respectfully request that the Court issue an Order To Show Cause that will provide Plaintiff Richard Kearney and Plaintiff Jacques Edwards with 21 days to either: (a) cure and comply with CMO 126 obligations of paragraphs B.9. and B.10.; or (b) file a stipulation dismissing the Endo Defendants with prejudice.

August 21, 2019

Respectfully submitted,

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GlaxoSmithKline LLC*

CERTIFICATE OF SERVICE

I, Daniel Meyers, hereby certify that on August 21, 2019, the foregoing document was filed via the Court's CM/ECF system, which will automatically serve and send email notification of such filing to all registered attorneys of record.

/s/ Daniel Meyers